

# **FINAL STATEMENT OF REASONS (FSOR)**

## **CALIFORNIA CODE OF REGULATIONS Title 19. PUBLIC SAFETY DIVISION 1. STATE FIRE MARSHAL CHAPTER 3. FIRE EXTINGUISHERS ARTICLE 3. GENERAL PROVISIONS**

### **FEE STRUCTURE FOR LICENSING AND CERTIFICATION FOR THE SERVICING, TESTING, AND MAINTENANCE OF PORTABLE FIRE EXTINGUISHERS**

#### **UPDATE TO THE INITIAL STATEMENT OF REASONS**

The Office of the State Fire Marshal (OSFM, SFM) has provided an update to the Initial Statement of Reasons. There have been no changes in the applicable laws or to the effects of the proposed regulations from those described in the Initial Statement of Reasons (ISOR) published with the Notice of Proposed Regulatory Action. The SFM proposes to adopt regulations to address fees for the Portable Fire Extinguisher (FE) Program.

#### **45-Day Public Comment Period**

The SFM made available a 45-day public comment period for the proposed regulations from May 28, 2021 through July 12, 2021. The SFM received written comments from (1) one person on the proposed regulations as originally noticed. The final statement of reasons includes staff revisions following the close of the 45-Day public comment period.

#### **15-Day Public Comment Period**

After the close of the 45-day public comment period, the SFM made available an "Addendum to the Initial Statement of Reasons" and modifications to the proposed text of the regulations for 15 days from November 23, 2021 through December 7, 2021.

The addendum contained amendments to the (NOPA) for statutory authority and cost impact on representative person or business; amendments to the ISOR for the Economic Impact Analysis and related sections; and documents incorporated by reference: APPLICATIONS FE-1, FE-2, FE-3 and FE-4 referenced in the TEXT.

Following the close of the 15-day public comment period, the SFM received written comments from 2 (two) persons. The SFM did not make any amendments to the text of regulations in response to the comments received. There were no further modifications made and no further comment periods.

The SFM has considered all relevant matters presented to it and recommends approval of the proposed regulatory action.

## **Documents Incorporated by Reference**

The following forms are incorporated by reference in the text of the proposed regulations:

1. Application for Concern License or Change (FE-1 REV. 10/2021)
2. Application for Limited Concern License or Change (FE-2 REV. 10/2021)
3. Application for Certificate of Registration or Change (FE-3 REV. 10/2021)
4. Application for Replacement Certificate of Registration Card (FE-4 REV. 10/2021)

The SFM has determined that it would be cumbersome, unduly expensive, or otherwise impractical to publish this document in the California Code of Regulations because it would be too voluminous. The documents are made available from the agency or are reasonably available to the affected public from a commonly known or specified source: Office of the State Fire Marshal website: <https://osfm.fire.ca.gov>.

## **TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES OR REPORTS**

The SFM did not rely on any report or other document in the development of this rulemaking beyond that previously identified in the Initial Statement of Reasons.

## **ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

No alternatives were proposed to the SFM that would lessen any adverse economic impact on small business.

## **ALTERNATIVES TO THE REGULATION**

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

An alternative the SFM considered to be less burdensome to businesses in carrying out the purposes of the proposed regulation was proposing half of the required fee initially then increasing to the full fee the following fiscal year. Proposing half of the required fee will lessen the burden on businesses but does not cover the required costs associated with the implementation of the FE Program to meet statutory requirements and industry demand.

## **ALTERNATIVES DETERMINATION**

In accordance with Government Code section 11346.9(a)(4), the Office of the State Fire Marshal has considered alternatives and has determined that no available alternative would be more effective in carrying out the purposes for which the action is proposed; or would be as effective and less burdensome to affected private persons than the proposed action; or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## **MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The proposed amendments to the regulations do not impose any mandate on local agencies or school districts.

## **COORDINATION WITH FEDERAL LAW**

The SFM has determined that this proposed regulatory action neither conflicts with nor duplicates any applicable federal regulation contained in the Code of Federal Regulations. There have been no changes in applicable laws related to the proposed action or to the effect of the proposed regulation from the laws and effects described in the Notice of Proposed Action.

## **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD.**

The SFM accepted public comments from May 28, 2021 through July 12, 2021. A public hearing was not requested nor scheduled, and no oral comments were received. The SFM received written comments from one (1) person on the proposed regulations.

**COMMENT 1:** Mrs. Cinde MacGugan-Cassidy, Island Fire Extinguishers, Inc, commented not to increase the fee structure for licensing and certification for the servicing, testing, and maintenance of portable fire extinguishers. She states that everyone is feeling the repercussions of the COVID-19 pandemic and doubling these fees to make up for the short fall in the OSFM should not happen. She feels it less impactful if the fees were a typical 3% Consumer Price Index (CPI) and that doubling the fees is totally unacceptable.

**RESPONSE:** The Office of the State Fire Marshal acknowledges the commentor and recognizes the repercussions of COVID-19 pandemic. However, as it was stated in the analysis, this proposed fee increase was planned prior to the COVID-19 pandemic and in the past 12 years the fees have not been assessed at a level sufficient to cover the costs nor staffing level associated with the expansion and demands of the FE Program. Program costs have risen significantly due to inflation, increasing personnel costs, an increase in the number of licensing and certification applications received, improved testing process, and online application processing. The SFM has postponed the fee increase for so many years and the inadequate funding has created a negative operational impact for both the SFM and the industry which results in a delay of the licensing, certification, and enforcement service. The proposed fee structure will allow the program to stay in operation with current and future demands and provide an efficient and reliable service to our customers. This will also allow the Program to stay out of a negative budget balance, which it currently has been in over the last several years. The SFM did not make any changes to the text of regulations.

## **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY PUBLIC COMMENT PERIOD.**

The SFM accepted public comments from November 23, 2021 through December 7, 2021. The SFM received written comments from two (2) persons on the proposed regulations.

**COMMENT 1:** Mr. Larry Kirschner, FireWorks Fire Protection Services Commented not to increase the fee structure for licensing and certification for the servicing, testing, and maintenance of portable fire extinguishers. He states that everyone is feeling the repercussions of the COVID-19 pandemic and doubling these fees to make up for the short fall in the OSFM should not happen. Costs have been going up substantially for the purchase of materials, parts, and labor, as well as the cost of fuel for our vehicles. He runs at very close margins because he believes his customers cannot tolerate rate increases due to closures during COVID. Restaurants are just getting started again and apartments, condominiums and other types of dwellings are barely comfortable with having servicemen enter their properties.

**RESPONSE:** The Office of the State Fire Marshal acknowledges and recognizes the repercussions of COVID-19 pandemic. However, as stated by-Mr. Kirschner, business costs have been going up substantially for the purchase of materials, parts, and labor, as well as the cost of fuel for vehicles. This reality is also the case for the State's business costs. The State's costs for the portable fire extinguisher program have risen significantly with increasing personnel costs, increases in the number of licensing and certification applications received, implementing improved testing processes, online application processes, and inflation. The SFM has postponed the fee increase for many years which has created a negative budget balance. The inadequate funding has created a harmful operational impact for both the SFM and the industry which results in delay of licensing, certification, and enforcement service. The proposed fee structure will allow the program to stay in operation with current and future demands as well as provide an efficient and consistent service to the State's business customers. The revenue generated will allow the Program to stay out of a negative budget balance, which it currently has been in over the last several years. The SFM did not make any changes to the text of regulations.

**COMMENT 2:** The Fletcher's Fire Protection Team

The Fletcher's Fire Protection Team commented "documentation (2a) doesn't mention what those costs are, only that nearly doubling the revenue will "keep the program in operation with current and future demands".

**RESPONSE:** The Office of the State Fire Marshal acknowledges The Fletcher's Fire Protection Team documentation does not mention what those costs are, only that nearly doubling the revenue will "keep the program in operation with current and future demands". As it stated in the ISOR, Program costs have risen significantly over the 12-year period since the last fee increase. The biggest increase has come from increased personnel costs to meet the COLA and medical benefits. General increase of the annual Cost of Living Allowances (COLA), which is 2% annually, increased 24% over this period. The average medical benefit increases 7% annually over the same 12-year period, which is a total increase of 108%. The inadequate funding has created a

negative operational impact for both the SFM and the industry which results in a delay of the licensing and certification service. Additionally, Health and Safety Code Section 13137, the Licensing and Certification Fund, specifies that the costs associated fees may not exceed the actual cost of administrating the OSFM's Licensing and Certification programs, and fees must be used for the benefit of the same group they are collected from. The SFM did not make any changes to the text of regulations.

**COMMENT 2b:** The Fletcher's Fire Protection Team commented not to increase the fee structure for licensing and certification for the servicing, testing, and maintenance of portable fire extinguishers due to the repercussions of the COVID-19 pandemic and doubling these fees to make up for the short fall in the OSFM should not happen.

**RESPONSE:** The Office of the State Fire Marshal acknowledges The Fletcher's Fire Protection Team and recognizes the repercussions of COVID-19 pandemic. However, as it was stated by The Fletcher's Fire Protection Team, business costs and labor have been going up substantially, as well as the cost of fuel for our vehicles for the business. It is no different for the State's business. As it was stated in the analysis, the State's costs for the Fire Extinguisher Program have risen significantly due to increasing personnel costs, an increase in the number of licensing and certification applications received, improved testing process, online application processing, and inflation. The SFM has postponed the fee increase for many years and the postponement has created a negative budget balance. Additionally, the inadequate funding has created a harmful operational impact for both the SFM and the industry which results in a delay of the licensing, certification, and enforcement service. This proposed fee structure will allow the program to stay in operation with current and future demands as well as provide an efficient and consistent service to the State's business customers. This will also allow the Program to stay out of a negative budget balance, which it currently has been in over the last several years. The SFM did not make any changes to the text of regulations.

**COMMENT 2c:** The Fletcher's Fire Protection Team commented "how many representatives did you consult with of the 500 companies you estimate this legislative change will affect and of those you talked to, how many have over 100 employees?"

**RESPONSE:** The Office of the State Fire Marshal consulted with and utilized input from the SFM Fire Extinguisher Advisory Committee, which is made up of representatives of industry, the public and the fire service and to seek comments and specific views on proposed regulations fire, the California Association of Life Safety and Fire Equipment (CALSAFE), and the portable fire extinguisher industry. The SFM also sought the advice of the State Board of Fire Services. Additionally, as required all Companies and technicians were notified of the regulatory changes and provide input through the public comment period as The Fletcher's Fire Protection Team was. Of those approximate 500 companies, the majority of them would be qualified as small business, which is as defined as organizations with fewer than 100 employees. The SFM did not make any changes to the text of regulations.

**COMMENT 2d:** The Fletcher's Fire Protection Team commented "how about tiered pricing based on the size of the company applying? Tiered requirements have been

used for everything from vaccination mandates to paid leave requirements and their labor laws, why not with these fees?”

**RESPONSE:** The Office of the State Fire Marshal considered an alternative to be less burdensome to the businesses and individuals in carrying out the purposes of the proposed regulation. The SFM proposes half of the required fee initially and increase to the full fee following fiscal year. Proposing half of the required fee will lessen the burden on businesses and individuals but does not cover the required costs associated with the operation of the FE program to meet statutory requirements and industry demands. Proposing full fees now is essential to run the program and cover all costs to operate. A partial fee increase was not feasible as it would not enable the OSFM to cover the costs associated with implementing the licensing and certification mandates, improve the licensing and certification service and enforcement, and meet current and future work demands. This total amount of fees collected are projected to support program costs while not exceeding the actual costs. The SFM did not make any changes to the text of regulations.

**COMMENT 2e:** The Fletcher’s Fire Protection Team commented “scaling back the non-essential features of some programs to reduce the work demands on the OSFM altogether, to reduce costs/increase efficiency.

**RESPONSE:** The Office of the State Fire Marshal acknowledges The Fletcher’s Fire Protection Team scaling back the non-essential features of some programs to reduce the work demands, however, there is nowhere to “scale back” for this program because it is all essential. The fees assessed by the Fire Extinguisher Program support compliance with statutory and regulatory requirements which is essential to protect life and property against fire and panic, enhancing public safety and worker safety. The SFM did not make any changes to the text of regulations.

**COMMENT 2f:** The Fletcher’s Fire Protection Team commented “petition the state treasury for additional funds. It is in the interest of the state government that the OSFM operates at capacity and enforces its regulations. Why is the funding burden falling on employers? Particularly during this time with both historic financial burden on companies and the economy, and a massive state tax revenue surplus?”

**RESPONSE:** The Office of the State Fire Marshal acknowledges The Fletcher’s Fire Protection Team petition the state treasury for additional funds. Through this evaluation, the OSFM determined that annual revenue under the current fee structure is insufficient to operate the program and therefore does not meet the requirements of Health and Safety Code 13137. Additional revenue is necessary in order for the program to implement the fund’s statutory requirements, as detailed in Health and Safety Code (HSC) Section 13137: The SFM did not make any changes to the text of regulations.

*HSC, Section 13137.*

*The State Fire Marshal Licensing and Certification Fund is hereby created in the State Treasury. All money in the fund is available for the support of the State Fire Marshal upon appropriation by the Legislature. All moneys collected by the State Fire Marshal pursuant to this part, pursuant to Part 2 (commencing with Section 12500) or Part 3 (commencing with Section 12750) of Division 11, and pursuant to Section 41961, shall*

*be deposited in the fund and shall be available to the State Fire Marshal for expenditure upon appropriation by the Legislature for the purposes of this part, Part 2 (commencing with Section 12500) or Part 3 (commencing with Section 12750) of Division 11, or Section 41961, respectively.*

*(b) Neither this article nor any provision of this part or Part 2 (commencing with Section 12500) or Part 3 (commencing with Section 12750) of Division 11 or Section 41961 authorize fees to exceed the actual cost of administration of the programs administered by the State Fire Marshal, nor authorize the charging of fees to a particular group being regulated under a program, for the costs of regulation under another program or for the costs of a different group under the same program.*

The proposed regulations are necessary to provide sustainable and complete funding to implement the Program's statutory enforcement mandates in Health and Safety Code Sections. Sustainable and complete funding will allow the OSFM to remain compliant with the State Fire Marshal Licensing and Certification Fund requirements in Health and Safety Code Section 13137. The State Fire Marshal Licensing and Certification Fund is a special fund and does not receive any general funding. The program's revenue generated shall support the program costs. Health and Safety Code Section 13127(d) in that the total amount of fees collected are projected to support program costs while not exceeding the actual costs. The SFM did not make any changes to the text of regulations.